

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.2641 OF 2017

ORDER:

This revision petition is preferred under Article 227 of Constitution of India challenging the order dated 17.02.2017 passed in I.A.No.72 of 2017 in A.S.No.4 of 2017 by the Senior Civil Judge, Bapatla, whereby the petition filed under Order XLI Rule 3A of Code of Civil Procedure (for short, hereinafter, referred to as "C.P.C.") was dismissed.

The petitioner filed petition under Order XLI Rule 3A of C.P.C. seeking stay of operation of decree and judgment passed in O.S.No.51 of 2015 by the Principal Junior Civil Judge, Ponnur on various grounds.

The appellate Court after hearing both the parties dismissed the petition declining to stay of operation of the decree and judgment in O.S.No.51 of 2015 passed by the Principal Junior Civil Judge, Ponnur assigning various reasons.

Aggrieved by the same, the present revision is filed mainly on the ground that though the defendant admitted about non existence of channel, dug the channel subsequent to filing of the appeal, but the appellate Court declined to stay of operation of decree in a petition filed under Order XLI Rule 3A of C.P.C.

During hearing, Sri Srinivas Emani, learned counsel for the petitioner, drew the attention of this Court to the admissions made by D.W.1 in his/her examination about the non-existence of channel, which is in dispute, but the Court below did not consider the request made by the learned counsel for the petitioner and

dismissed the petition erroneously. He prayed to set aside the order passed by the Court below and allow the petition.

It is a strange case, where the petitioner filed a suit for perpetual injunction, which ended in dismissal by the trial Court. Aggrieved by the decree and judgment, the petitioner herein preferred an appeal A.S.No.4 of 2017 before the Senior Civil Judge, Bapatla and pending appeal, the petitioner sought for stay of operation of decree and judgment in O.S.No.51 of 2015 passed by the Principal Junior Civil Judge, Ponnur.

When a decree is against this petitioner, grant of stay of operation of the decree is of no purpose and seeking such relief by filing a petition under Order XLI Rule 3A of C.P.C. itself is erroneous. Order XLI Rule 3A of C.P.C. deals with condonation of delay in filing appeal, but claiming such relief of stay of operation of decree and judgment in O.S.No.51 of 2015 is misconceived in view of the dismissal of the suit by the trial Court. At best, the petitioner may claim relief of interim injunction during pendency of the appeal under Order XXXIX Rule 1 and 2 of C.P.C.; instead of filing such application the petitioner filed a petition under Order XLI Rule 3A of C.P.C. erroneously, but the Court more cautiously passed the order dismissing the petition for different reasons not on the ground that the petitioner cannot seek such relief in an appeal filed by him against the dismissal of his own suit. Hence, I find no ground to interfere with the order passed by the Court below. Consequently, the revision petition is liable to be dismissed.

In the result, the revision petition is dismissed. No costs. However, liberty is given to the petitioner to file appropriate

application under Order XXXIX Rule 1 and 2 of C.P.C. or under any other provision.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

08.02.2018

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